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Bank and Corporation Franchise Tax Law

By MELVIN D. WILSON,* of the Los Angeles Bar

The methods of financing governments as well as the methods of financing private enterprises change with the development of new economic conditions.

Without going into the history of the taxing system of California in detail, a brief reference to the conditions which brought about the enactment of the Bank and Corporation Franchise Tax Law of California, and its companion law, the new tax on intangibles and solvent credits, will assist in an understanding of the franchise tax on banks and corporations.

Prior to the recent revisions in the tax system, California imposed a franchise tax of one and eight-tenths mills on the corporate excess of business, financial, mercantile, and manufacturing corporations. It imposed a tax of \$1.45 per thousand on the shares of national and State banks. It imposed a tax of \$1.45 per thousand on intangibles and solvent credits. It exempted mortgages from taxation.

This system of taxation met with many obstacles. In the first place, national banks are creatures of the Federal government and can be taxed by States only with the consent of Congress. Congress has given States permission to tax the shares of national banks provided the shares are not taxed at a higher rate than the capital of citizens of the State in competition with the banks.

National banks were objecting to the tax system of California on the ground that money invested in mortgages was in competition with national banks and that mortgages were exempt from taxation while the bank shares were taxed at \$1.45 per thousand. The national banks also objected on the ground that citizens of the State could deduct debts due by them against solvent credits. The holders of bank shares had no such deductions for debts.

Under these conditions the national banks paid their taxes under protest and brought suit for their recovery, contending that the California law taxing the shares of national banks was discriminatory under revised Section 5219 of the United States Statutes.

About the same time that the bank tax was thought to be invalid, the Supreme Court of California held that the \$1.45 tax on intangibles and solvent credits as well as its predecessor, the so-called 7 percent Tax, was unconstitutional, upon technical grounds.

In the face of this situation, the Legislature created the California Tax Commission, and Governor Young appointed its members, who, in August, 1928, made a special report calling attention to the emergency in State finances brought about by the present laws on the taxation of banks, intangibles, and solvent credits.

As a result of the Commission's report, a Constitutional Amendment was adopted on November 6, 1928, authorizing the Legislature to change the method of taxing banks and corporations, as well as intangibles and solvent credits.

Enabling Act

On February 26, 1929, the California Legislature passed an enabling act to carry into effect the provisions of Section 16 of Article 13 of the Constitution of the State of California relating to bank and corporation taxes. The Governor approved the act March 1, 1929.

Based on Net Income

This act, known as the Bank and Corporation Franchise Act, provides that all national banks located in California, and all State banks doing business in California, and all financial, mercantile, manufacturing and business corporations organized or doing business in California, except public utilities and insurance companies, shall pay to the State for the privilege of exercising their corporate franchises in California, a tax equal to 4 percent of the net income for the preceding fiscal or calendar year.

This tax on State and national banks shall be in lieu of all other taxes except local taxes on their real property.

Offset

The tax of 4 percent on the net income may be offset up to 75 percent thereof by taxes paid on real property by the banks

*Of Miller, Chevalier, and Latham.

and on real and personal property by the other classes of corporations taxed under this law. Only 10 percent of the taxes paid upon real property may be used as an offset, however, in the case of both banks and corporations.

In computing the net income the real and personal property taxes paid are, of course, deducted. When an offset for such taxes is claimed there must be added back to the franchise tax 4 per cent of the offset, in order to prevent a double benefit for the real and personal property taxes.

The corporation may request and receive from the Tax Assessor or Collector of the County, a detailed tax receipt showing the amount of real and personal property and the taxes paid thereon.

Every bank or corporation doing business in the State shall pay a minimum tax of \$25.00 per year.

Associations Exempt

The real estate and oil interests of the State have been very much interested in ascertaining whether or not the new corporate franchise tax law would attempt to cover the common law syndicates, trusts, and associations, such as the oil and real estate syndicates. Since the law refers solely to corporations and does not mention associations it seems clear that the State will not endeavor to impose the corporate franchise tax on the oil and real estate and similar trusts, syndicates, or associations.

Gross Income

Gross income includes gains, profits, and income derived from business of whatever kind and in whatever form paid, including interest received from Federal, State, municipal and other bonds, and except as hereinafter provided, includes all dividends received on stocks. This definition in effect permits the State to tax the interest on Federal obligations and there is some doubt as to the constitutionality of this provision. *National Life Insurance Co. v. United States*, 48 Sup. Ct. 591.

Net Income

The term net income means the gross income less the allowable deductions.

Deductions

In computing net income the following deductions from gross income shall be allowed:

A. Ordinary and necessary business expenses paid or incurred during

the taxable year including reasonable salaries and rent on property to which the taxpayer has not taken or is not taking title or in which he has no equity.

- B. Interest paid or accrued during the taxable year on indebtedness.
- C. Taxes or licenses paid or accrued during the taxable year except bank and corporation franchise tax; except income taxes of a foreign country or any state; except special assessments intending to increase the value of the property assessed; except real and personal property taxes paid in California if and to the extent they are claimed as an offset as provided in Sections 3 and 4. Federal income taxes accrued during the year may be deducted.
- D. Losses sustained during the taxable year and not compensated for by insurance or otherwise except that no losses can be taken on the sale of securities where it appears that within thirty days before or after the date of such sale, the taxpayer has acquired or has entered into a contract or option to acquire substantially identical property.
- E. Bad debts may be deducted either when ascertained to be bad or when partially ascertained to be bad or by setting up a reasonable reserve for bad debts. In the case of a debt existing on January 1, 1928, the fair market value of the debt on that date shall be the maximum which can be charged off as a bad debt.
- F. & G. Depreciation and obsolescence may be deducted—to be allowed on the same basis as is provided in Sections 113 and 114 of the Revenue Act of 1928, except that the January 1, 1928 value shall be used instead of the March 1, 1913 value. Sections 113 and 114 of the Revenue Act of 1928 provide the following bases for depreciation and depletion:
 - (a) Cost, or March 1, 1913 value, whichever is greater.
 - (b) The cost or March 1, 1913 value to the transferor, where the taxpayer corporation acquired the

property in any of the following non-taxable exchanges:

- (1) Where the property held for productive use in trade, in business, or for investment, is exchanged solely for property of a like kind to be held either for productive use in trade, or in business, or for investment.
- (2) Where property is transferred to a corporation by one or more persons solely in exchange for stock or securities in such corporation and immediately after the exchange such person or persons are in control of the corporation; 'control' meaning the ownership of at least 80 per cent of all classes of stock of the corporation.
- (3) Where a corporation in pursuance of a plan of reorganization acquires property solely for stock or securities of the taxpayer corporation or of another corporation a party to the reorganization.
- (4) Where property is compulsorily or involuntarily converted into property similar or related in service or use to the property so converted, or into money which is forthwith in good faith expended in the acquisition of other property similar or related in service or use to the property so converted, or in the establishment of a replacement fund, and no taxable gain or loss was recognized, or not recognized in excess of the money which is not so expended.
- (5) Property acquired during affiliation shall be governed by Regulations 75 under the Revenue Act of 1928.
- (c) The basis for depletion of mines shall be the cost, January 1, 1928 value, or the value as determined under (b) above, or in the case of mines discovered by the taxpayer after January 1, 1928 the basis for depletion shall be the fair market value of the property at date of discovery, or within thirty days thereafter. The depletion allowance based on discovery value shall not exceed 50 percent of the net income of the taxpayer (com-

puted without allowance for depreciation) from the property upon which the discovery was made.

- (d) In the case of oil and gas wells, the allowance for depletion shall be based on the cost, January 1, 1928 value, or the transferor's value as in (b) above, or 27½ percent of the gross income from the property during the taxable year, whichever is greater. The allowance based on 27½ percent of gross income shall not exceed 50 percent of the net income of the taxpayer (computed without allowance for depreciation).
- H. Corporations may deduct dividends received from income arising out of business done in this State. The burden of proving that the dividends have already been taxed is on the taxpayer corporation.
- I. Mutual building and loan associations may deduct an average rate paid on indebtedness; said average may be local or State average, as the building and loan commissioner may determine.
- J. Mutual savings banks may deduct all interest paid to non-members and interest paid to members at the average rate of interest paid on bank deposits in the State to be determined by Superintendent of Banks.
- K. Farmers' co-operative associations may deduct all income distributable to members or all income if operating on non-profit basis.
- L. Other co-operative or mutual associations may deduct the income turned back to the members or the income if on a non-profit basis.

If any of the deductions provided for in the above are finally adjudged discriminatory against a national banking association contrary to Section 5219 of the Revised Statutes of the United States, or for any reason finally adjudged invalid, the tax will be recomputed, disallowing the deduction.

No deduction can be taken for (a) cost of any assets or permanent improvements or betterments; (b) replacements; (c) premiums paid on life insurance policies if the taxpayer is the beneficiary; (any amounts received in excess

of total premiums paid from such a policy upon maturity will be tax exempt).

Allocation of Income

California is only entitled to tax the income earned in this State. If all the business of a bank or corporation is done in this State the tax shall be on entire income. If part of the business is done outside of the State then the tax will be on that portion of the total income which is derived from the business done in this State.

The bank and corporation franchise tax return, copies of which are just being mailed to corporations, provides that the corporation shall submit a copy of its latest Federal income tax return to the State Franchise Tax Commissioner. The Federal income will be adjusted to conform to the differences in the California and the Federal law, and then the total corporate income as computed under the California law will be allocated, showing the amount earned in California.

The method of allocation provided on the return is as follows:

The net income arising from business done within the State is determined as follows:

(a) The percentage of the average value of real and personal property within the State to the total of such property within and without the State is determined.

(b) The percentage of wages, salaries, commissions, and other compensation of employees paid within the State to the total of such expenses paid both within and without the State, is determined.

(c) The percentage of gross sales within the State to the gross sales both within and without the State is determined.

These three percentages are then averaged.

From the total net income of the corporation as computed under the California law (before allocation) is deducted the amount of dividends which do not arise from income earned within the State. The balance is the net income to be allocated. The average percentage found above is applied to the net income to be allocated and the result is the amount of income arising from business done within the State. To the income

arising from business done within the State is added the dividends which have not already been taxed by California.

The Commissioner is authorized to apply other methods of allocation to prevent tax evasion, and also to avoid subjecting the taxpayer to double tax. If such other method is used, then the Commissioner may be required to disclose the basis of allocation by request from the taxpayer.

Returns

The returns shall be prepared on the same basis on which the books are kept, if books are kept. The returns shall be for the same period on which the books are kept. If no books are kept or if the corporation has no calendar or fiscal year, then the Commissioner will require returns year and upon such basis of accounting as will best reflect the true net income of the corporation.

The returns are due seventy-five days after the close of the corporation's calendar or fiscal year. Returns which would otherwise be due on March 15, 1929, will not be due until May 15, 1929, and returns which would otherwise be due on April 15, 1929, will not be due until May 15, 1929. This general extension is given to afford taxpayers an opportunity to study the law and prepare their returns, the law having been passed only about two weeks before the returns would otherwise be due.

Returns are required to be verified by an executive officer of the bank or corporation. A reasonable extension of time for filing returns may be granted by the Commissioner where good reason exists. Such extension shall not exceed ninety days. If no return is filed the Commissioner is authorized to make an estimate of the net income and to compute and levy the tax from any information in his possession.

Affiliated Corporations

Where the stock of two or more banks or corporations is owned or controlled directly or indirectly by the same interests, the Commissioner is authorized to distribute a portion or allocate gross income or deductions between or among such corporations or banks if he determines that such distribution or allocation is necessary in order to prevent evasion of taxes, or to reflect clearly the income of any such corporations or banks.

An affiliated group of banks or corporations has the privilege of making a consolidated return for any taxable year in lieu of separate returns. An affiliated group means one or more banks or corporations connected through stock ownership, with a common parent bank or corporation, if at least 95 percent of the stock of each of the banks or corporations, except the common parent, is owned directly by one or more of the other banks or corporations, and the common parent owns directly at least 95 percent of the stock of at least one of the other banks or corporations, or if at least 95 percent of the stock of each of the banks or corporations is owned by the same interests or by the same stockholders. As used in this section, the term "stock" does not include non-voting stock, which is limited and preferred as to dividends.

The limitation on the offset is computed on the total taxes paid by all the affiliated corporations.

Inventories

If in the opinion of the Commissioner the use of inventories is necessary clearly to determine the net income of any taxpayer, inventories shall be taken by such taxpayer upon such basis as the Commissioner may prescribe, conforming as nearly as may be to the best accounting practice and most clearly reflecting the income.

Penalties

If the corporation fails or refuses to file a return or give any information required, or files a fraudulent return, it is subject to a maximum fine of \$5,000 for each offense. The officer signing a false return is guilty of a misdemeanor and may be fined from \$300.00 to \$5,000.00, or imprisoned for one year in the County Jail, or both, for each offense.

If a corporation is delinquent in paying the first installment of tax, a penalty of 15 percent shall be added to such installment. If the corporation is delinquent in paying the second installment of tax a penalty of 5 percent shall be added to the second installment. If the corporation at the time the second installment is due, which is six months after the return is due, is still delinquent on the first installment, an additional penalty of 5 percent shall be added to the first installment.

Non-Taxable Exchanges

The California law provides that upon

the sale or exchange of property the entire amount of gain or loss shall be recognized except as hereinafter provided:

(1) No gain or loss shall be recognized if property held for productive use in trade or business, or for investment (not including stock in trade or other property held primarily for sale, nor stocks, bonds, notes, choses in action, certificates of trust or beneficial interest, or other securities or evidences of indebtedness, or interest) is exchanged solely for property of a like kind to be held either for productive use in trade or business or for investment.

(2) No gain or loss shall be recognized if common stock in a corporation is exchanged solely for common stock in the same corporation or if preferred stock in a corporation is exchanged solely for preferred stock in the same corporation.

(3) No gain or loss shall be recognized if stock or securities in a corporation a party to a reorganization and in pursuance of a plan of reorganization are exchanged solely for stock or securities in such corporation or in another corporation a party to the reorganization.

(4) No gain or loss shall be recognized if a corporation a party to a reorganization exchanges property in pursuance of a plan of reorganization solely for stock or securities in another corporation a party to the reorganization.

(5) If an exchange would be within the above provisions if it were not for the fact that the property received in exchange consists not only of property permitted by the above paragraphs to be received without the recognition of gain, but also of other property or money, then the gain, if any, to the recipient, shall be recognized but in an amount not in excess of the sum of such money, and the fair market value of such other property. If, however, the corporation distributes such other property or money in pursuance of the plan of reorganization, no gain to the corporation shall be recognized from the exchange.

(6) If an exchange would be within the above provisions if it were not for the fact that the property received in exchange consists not only of property

permitted by such paragraph to be received without the recognition of gain or loss but also of other property or money, then no loss from the exchange shall be recognized.

(7) No gain or loss shall be recognized where property is involuntarily converted into cash, if said cash is immediately reinvested in similar property.

(8) If there is distributed in pursuance of a plan of reorganization to a shareholder in a corporation a party to the reorganization, stock or securities in such corporation, or in another corporation a party to the reorganization, without the surrender by such shareholder of stock or securities in such corporation, no gain to the distributee from the receipt of such stock or securities shall be recognized.

(9) As used in this section, the term "reorganization" means (a) a merger or consolidation (including the acquisition by one corporation of at least a majority of the voting stock and at least a majority of the total number of shares of all other classes of stock in another corporation); or (b) a transfer by a corporation of all or a part of its assets to another corporation, if immediately after the transfer the transferor or its stockholders, or both, are in control of the corporation to which the assets are transferred; or (c) a recapitalization; or (d) a mere change in identity, form, or place of organization, however effected.

(10) The term "a party to a reorganization" includes a corporation resulting from a reorganization and includes both corporations in the case of an acquisition by one corporation of at least a majority of the voting stock and at least a majority of the total number of shares of all other classes of stock of another corporation.

(11) As used in this section the term "control" means the ownership of at least 80 percent of the voting stock and at least 80 percent of the total number of shares of all other classes of stock of the corporation.

Installment Sales

The corporation may file its returns on the installment sale basis in the same manner as is provided in the Revenue Act of 1928. If the taxpayer elects to use the in-

stallment basis, however, it must report as income the collections received on installment sales made prior to December 31, 1927.

Basis for Gain or Loss

The basis for determining the gain or loss on the sale or other distribution of property, real, personal, or mixed, is the cost thereof if acquired on or after January 1, 1928, or the January 1, 1928 value if the property was acquired before that date. The basis shall be diminished by the amount of deduction for exhaustion, wear and tear, obsolescence and depreciation which shall be allowable in respect to such property under this Act.

When property is received in a non-taxable exchange, then the basis for determining profit and loss on the property received in such exchange shall be the same as the property given in such exchange.

This provision is slightly different from the Federal provision, which requires the recipient of assets in a non-taxable exchange to value them in determining profit or loss on the same basis on which the transferor would have valued them.

It will be noted that under the California law assets will have one basis for determining profit or loss, and a different basis for determining depreciation. The basis for determining depreciation will be the cost, January 1, 1928 value, or the transferor's cost, while the basis for determining profit or loss is the cost, January 1, 1928 value, or the cost or January 1, 1928 value of assets given for the new assets in non-taxable exchange. This was probably an oversight on the part of the authors of the law and will no doubt be the means of great tax saving to a good many corporations.

The Tax Commissioner

The Director of the Department of Finance, the Comptroller of State, and the Chairman of the State Board of Equalization appoint the Commissioner and his assistants, and are authorized to pay them such amounts and for such periods as they deem fit.

The Commissioner and the State Board of Equalization have power to make regulations, to prescribe forms, to inspect property, to collect information, to call public officials and require them to produce public records, to issue subpoenas for the attendance of witnesses or the production of

books, to require the attendance of any person having knowledge and to bring with him books and records and to testify under oath on any matter relating to an assessment to be made; to examine books and accounts of corporations and to employ accountants for that purpose; to administer oaths.

Audit and Review

The law provides that the corporation will compute its own tax and pay one-half thereof at the time of filing its return.

The returns will be audited by the Commissioner and his staff. If the Commissioner deems additional taxes to be due he will mail a notice of the proposed additional tax to the corporation. Thereafter, the corporation has sixty days within which to file a protest under oath to the Commissioner, taking exception to the proposed additional tax. The corporation may request an oral conference with the Commissioner, which will be granted.

After the Commissioner has considered the taxpayer's protest and the matter submitted at the conference, he again takes action on the matter, and if he still deems additional tax to be due he again mails a notice to the taxpayer.

The corporation then has thirty days within which to file an appeal to the State Board of Equalization. The appeal must be under oath. A copy must be sent to the Commissioner. The law makes no provision for an oral conference with the State Board of Equalization but it is very probable that arrangements will be made for conferences.

After the Board makes its decision on the taxpayer's appeal, it gives final notice to the taxpayer and to the Commissioner. The law provides that the Commissioner shall also mail a final notice to the corporation and make demand for the tax. The taxpayer has ten days within which to pay.

A certificate of mailing by the Board of Equalization or the Commissioner is prima facie evidence of the computation and levy and notice and demand of the tax.

No protest or appeal is allowed in the case of fraudulent returns.

Claims for Refund

If the Commissioner or the Board of Equalization deems an amount to have been paid illegally, they may make a refund to the corporation or to its successor or stockholders if the company has been

dissolved, or consolidated, or reorganized. These refunds must be approved by the State Board of Control. Interest at 6 percent will be allowed on refunds to a date not more than thirty days prior to the date of warrant.

If a tax is illegally levied the Commissioner shall certify to the State Board of Equalization, and it will cancel the tax upon the records of the Commissioner.

A corporation may pay its tax under protest and then sue the State Treasurer for refund. This suit must be begun within ninety days from the time the final notice of tax is mailed.

When the claim for refund has been denied or has not been acted upon for six months, the corporation may sue the State Treasurer. This suit must be begun within ninety days from the Commissioner's final action on the claim.

A copy of the complaint and summons must be served on the State Treasurer or his deputy. When the Treasurer demurs or answers, he may demand the trial be held in Sacramento County, which demand must be granted. The Attorney General of the State will defend the action. In all suits for recovery of taxes brought by the taxpayer or for the collection of taxes brought by the State, the Code of Civil Procedure will govern the pleading and procedure.

Interest at 6 percent will be allowed on judgments to a date not more than 30 days from the date of warrant.

Delinquencies

Within one year after delinquency, the State Comptroller may sue the taxpayer in Sacramento County to collect delinquent tax. The Comptroller may attach property of the taxpayer without the necessity of an attachment bond.

The tax is a judgment and the levying of the tax lien is an execution. The tax shall be a lien on the first Monday of March of each year. A corporation cannot get a decree of dissolution until the tax is paid.

Suspension and Forfeiture

If the corporate franchise tax is not paid by 6 o'clock p.m. on the last day of the twelfth month after the date of delinquency of the first installment, the corporation's franchise will be suspended and a foreign corporation will forfeit its right to transact intra-state business in California.

The State Comptroller will notify the Secretary of State of the delinquency, who will in turn make public record of the same. This makes the suspension and forfeiture effective.

Thereafter, any person transacting any business of a suspended and forfeited domestic corporation is guilty of a misdemeanor and subject to a fine of from \$250.00 to \$500.00, or from fifty to five hundred days in jail, or both.

Every contract made in violation of this section is voidable.

Reinstatement

A suspended or forfeited corporation may have its franchise reinstated by written application and paying the tax, interest, and penalties. Any stockholder, creditor, or a majority of the surviving trustees or directors may apply for reinstatement. The application for reinstatement is filed with the State Comptroller. If a corporation is revived in a year subsequent to the year in which the delinquency is incurred, it must pay double the tax and interest and penalty.

The revivor does not affect the rights accrued during suspension or forfeiture. If another corporation has adopted a name similar to the name of the suspended company during the suspension and forfeiture, then the old corporation applying for reinstatement may have to change its name.

Secrecy

It shall be unlawful for the Commissioner of the State Board of Equalization or

the Comptroller or any other tax authority to divulge any information concerning the affairs of the banks or corporations reporting hereunder. The Governor may authorize an examination of such returns by the State officers or tax authorities of another State or of the Federal government if a reciprocal arrangement exists.

A violation of these provisions shall be a misdemeanor and subject to a fine of \$500.00 or six months in jail, or both.

General

It is evident from an examination of the law and of the return, that the preparation, audit, review, and administration of the returns and of the law will necessarily be much more difficult than the Federal corporate income tax law and returns by reason of the allocation within California, the different basic dates, and the offsets.

It might reasonably be expected that substantially all of the corporate property of the State would have to be appraised and valued as of January 1, 1928.

Fortunately, a general knowledge of the Federal law on the part of corporation officials and attorneys, and a vast accumulation of Federal income tax case law is available to the California corporate taxpayers and their counsel. Upon this foundation and by comparison with the Federal law the Bank and Corporation Franchise Tax Law will be more readily understandable than would otherwise be the case if it were not for the Federal income tax experience.

STATEMENT OF THE OWNERSHIP, MANAGEMENT, CIRCULATION, ETC., REQUIRED BY THE ACT OF CONGRESS OF AUGUST 24, 1912.

Of The Bar Association Bulletin published monthly at Los Angeles, California, for April 1, 1929.
State of California, County of Los Angeles, ss.

Before me, a Notary Public in and for the State and county aforesaid, personally appeared Howell Purdue, who, having been duly sworn according to law, deposes and says that he is the Editor of the Bar Association Bulletin and that the following is, to the best of his knowledge and belief, a true statement of the ownership, management (and if a daily paper, the circulation), etc., of the aforesaid publication for the date shown in the above caption, required by the Act of August 24, 1912, embodied in section 411, Postal Laws and Regulations, printed on the reverse of this form, to wit:

1. That the names and addresses of the publisher, editor, managing editor, and business managers are:
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(Continued on Page 250)

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GEO. E. MILLS, Mgr.

The President's Page

EDITOR'S NOTE: *President Guy Richards Crump has delegated the writing of this page for the present issue to Mr. Lawrence L. Larrabee, member of the Board of Trustees and chairman of the Judiciary Campaign Committee.*

Fellow Members,

Los Angeles Bar Association:

The legal profession enjoys the distinction of having furnished the nation and its component States with more legislators, government executives and promoters of progressive, broad-visioned legislation, than any other. Also it has, of course, given the country its judges.

It would be trite to dwell upon the importance of the judicial branch of government, or the desirability of maintaining the highest possible standards in its personnel. Since the legal profession supplies this personnel, it is directly responsible to the people for its quality and character.

This responsibility is marked with special clarity in those jurisdictions in which judges are chosen by popular vote. It will at once be conceded that the selection of the best qualified, among a group of technically trained specialists, cannot be expected from an electorate ignorant of what constitutes essential qualifications and having little opportunity to know the extent to which they are possessed by any candidate. Lawyers are presumed to have the information.

In most of the centers of large population where the election of judges prevails, the legal profession has for many years been alive to the duty, which it owes to society and government, to give the uninformed public such assistance in voting as may be found in the consensus of professional opinion concerning the character and abilities of those who aspire to places on the bench. It is obvious to make that opinion dependable and authentic, it must be secured through organization, and for this reason we find bar associations in

many of our largest cities devoting the machinery of their organizations to this object.

It should be a ground for pride and gratification to every lawyer of this community, that the Los Angeles Bar Association has been one of the earliest and largest of the organizations to undertake this valuable public service. The opportunity of each member of this Association to participate in its encouragement of the voter to base his choice of candidates for the bench solely upon their qualifications, constitutes a distinct privilege. It is indeed regrettable that a large number of our members have not appreciated this privilege and been sufficiently interested in the preservation of high standards in our courts, to give support of any kind to an activity of the Association which demands, for its success, the earnest participation of every member.

Our Association is engaged in an effort to establish the profession in its proper place in this community as a potent influence for maintaining the exceptional excellence, which on the whole, now characterizes our City and County Judiciary. We cannot permit failure in this effort. The heavy burden of labor and personal sacrifice necessarily involved must not be allowed to rest entirely upon the shoulders of the small group of men who, as your officers and committeemen, have been delegated to supervise the performance of this service. They have the right to expect, and *must* have, the loyal co-operation of every member of the Association. Such co-operation is your contribution to civic welfare.

LAWRENCE L. LARRABEE

Special announcements by law firms of new locations and new associations are most effectively made to the profession through the pages of the BULLETIN. In addition, such announcements serve as a manifestation of good-will toward and co-operation with the BULLETIN in its program of constructive endeavor for the welfare of the Bar Association.

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Results of Bar Association Plebiscite

To the Board of Trustees, Los Angeles Bar Association:

Your committee appointed to canvass the ballot on the plebiscite on the Municipal Judges reports as follows:

Total number of ballots received	1101
Disregarded because no name on envelope	33
Not counted because of disfiguration	2
Net ballots counted	1066
Not counted as to one or more offices because of double voting	6

Net results:		Best Qualified	
OFFICE II		Frank E. Carleton	115
Total vote	1002	Merrill L. Granger	63
		William D. McConnell	824
OFFICE III		Morris M. Ferguson	155
Total vote	1003	R. Morgan Galbreth	848
OFFICE VII		Charles F. Adams	96
Total vote	1018	Guy F. Bush	747
		Perry Thomas	175
OFFICE VIII		Warren Lee Pierson	293
Total vote	918	Dudley S. Valentine	625
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Total vote	998	Raymond G. La Noue	195
OFFICE X		Wilbur C. Curtis	185
Total vote	1005	Charles P. Johnson	65
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L. A. BAR ASSOCIATION MONTHLY DINNER AND MEETING CHAMBER OF COMMERCE

Thursday Evening, April 18, 1929, 6:00 P. M.

TWO SPLENDID SPEAKERS

JAMES GRAFTON ROGERS

will speak on "Types of the American Lawyer—Past, Present and Future."

Dean Rogers, a gifted speaker, is making a special trip from Colorado for this occasion. He is Chairman of the Conference of Bar Association Delegates of the American Bar Association and was a member of the Executive Committee of the Association last year. In 1925-1926 he served as President of the Colorado State Bar Association.

JUDSON ADAMS CRANE

will speak on the Origin and Nature of Extra territorial Courts in China. Objections to Their Continuance by the Chinese Nationalists and Prospects of Abolishment.

Doctor Crane was a member of the bar of the United States Court for China for many years. He is now a member of the American, Pennsylvania and Alleghany Bar Associations, and is a recognized authority and writer on many branches of the law.

The Correlli Trio, of Radio Fame, will render music during the dinner hour.

If unable to be present at the dinner, you are welcome to attend the program which will commence at 7:30 p.m. and conclude about 9:00 p.m.

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Members Urged to Contribute to the Bulletin

In an endeavor more efficiently to carry on the program and aims of the retiring Bulletin Committee, Norman A. Bailie, chairman of the Bulletin Committee for the present year, has appointed a sub-committee to look after the literary work of the BULLETIN. The report of last year's committee states that "The BULLETIN should be more than a mere 'house organ.' It should seek out, encourage and develop legal writers. . . . We want the BULLETIN to be used frequently by the busy practitioner and in order to interest him and hold his attention, the articles should be brief, practical and authoritative."

The report suggests that the articles might be along the lines of those covering practice in lower courts, information con-

cerning Bar Association activities, legal lore and curiosities, comment on changes in the Codes while the Legislature is in session, and brief review of important Superior Court decisions. Also, that the BULLETIN be made such that it will be a permanent reference work for lawyers in this city.

The sub-committee in charge of the literary work desires at this time to emphasize the fact that the BULLETIN is primarily your BULLETIN, and only through the individual efforts of each member of the Bar Association can the publication be made to serve the purposes for which it is intended.

We feel that many of you from time to time have comments along one or several of the lines specified by last year's Bulletin Committee and we urge you at this time to assist us in keeping up the standard this publication has achieved in the past and, if possible, make it more interesting to the members of the bar in the future.

This can be done by writing or telephoning the editor or any one of the undersigned members of the sub-committee and giving us constructive criticism, suggesting topics that will be of interest to the members as a whole, preparing for us papers on matters of interest to the Los Angeles Bar, comments on important Superior Court decisions, historical comment concerning the practice of law in pioneer days in this city and possibly humorous anecdotes concerning members of the bar and judiciary of this city.

We hope that you will all give us your whole-hearted support and assistance in this work.

BULLETIN SUB-COMMITTEE

Birney Donnell, *Chairman*
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Annual Report of the Committee on Building for 1928-29

(Filed February 12, 1929)

To the Los Angeles Bar Association:

The Bar Association Building Committee consisting of Mr. Guy Richards Crump, Mr. Norman Bailie and the undersigned, held a number of meetings during the past year.

Definite negotiations had previously been had with Lincoln Mortgage Company, owner of a site between Sixth and Seventh Streets on the east side of Flower Street. The president of the company, Mr. J. K. Bailie, and his assistant, Mr. Henshaw, had tentatively agreed with us to erect a suitable building, and a satisfactory financial set up was submitted to and accepted by our Committee. We spent a great deal

of time going over the architects' plans and drawings and many revisions were made at our suggestion. Sketches and complete blue print plans of all floors of the building were made by Allison and Allison, architects.

Lincoln Mortgage Company had carried in the BAR ASSOCIATION BULLETIN, at its own expense, advertising space re the proposed bar association building, in response to which many enquiries were received and prospective reservations made.

After all this work was done and both sides had agreed to put the matter in the hands of attorneys for the actual drafting of the final agreement, we were surprised to receive a letter from Lincoln Mortgage Company to the effect that owing to the uncertainty as to the time when Wilshire would be cut through from Figueroa to Flower, its board of directors had decided to delay the erection of the bar association building until the opening of Wilshire was definitely determined, at which time the company would be glad to proceed with the erection of the building.

The matter of securing a site and financing for a building was thereupon taken up with other agents and owners, a number of whom received the suggestion favorably and have the same under consideration. Among these is Mr. I. Eisner, of Sun Realty Company. We had a conference with him in which he said that he believed our plan was feasible and that he felt he could work it out to our satisfaction.

Respectfully submitted,
Kemper Campbell, *Chairman.*



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Annual Report of the Committee on the Bulletin for 1928-29

(Filed February 14, 1929)

To the Los Angeles Bar Association:

The Los Angeles Bar Bulletin Committee begs to submit the following as its annual report for the calendar year closing December 31, 1928:

BULLETIN FINANCIAL STATEMENT FOR FISCAL YEAR JANUARY 1, 1928 TO DECEMBER 31, 1928

R E C E I P T S

Total charges for advertising	\$3,831.50
Total charges for subscriptions (not members of Bar Association)	16.50
Total charges	3,848.00
Total collections from advertising	3,699.00
Total collections from subscriptions	15.50
Total collections	3,714.50
Total outstanding accounts (advertising)	132.50
Total outstanding accounts (subscriptions)	1.00
	133.50
Total outstanding accounts not collectible	22.50
Total outstanding accounts considered collectible	111.00
Total collections	3,719.50
Total outstanding accounts considered collectible	111.00
Total income	\$3,819.50

DISBURSEMENTS

Total cost of printing, mailing, editor's salary, and incidentals	\$5,389.20
---	------------

S U M M A R Y

Total disbursements	\$5,389.20
Total collections	3,714.50
Debit balance	\$1,674.70
Less accounts considered collectible	111.00
Cost of BULLETIN to Bar Association	\$1,563.70

COMMENTS

Of the aforesaid total cost of \$1,563.70, approximately \$600.00 over and above the cost of an ordinary edition was incurred for printing and mailing the Annual Edition of the BULLETIN, March 1, 1928.

Concluding that for all practical purposes, a monthly publication would serve the ends of the Association substantially as well as a semi-monthly publication, and with a view of bettering the financial condition of the BULLETIN, a decided change of policy was recommended by the Bul-

letin Committee and approved by the Board of Trustees, in August, 1928, for the publication of the BULLETIN but once a month, instead of semi-monthly, as previously.

Since the inauguration of this policy, the BULLETIN for the five months of August, September, October, November and December, 1928, cost the Bar Association but \$129.95, or an average cost of only \$25.99 per month. It is to be anticipated, therefore, that during the year 1929, the BULLETIN will be furnished to the members of the Bar Association at only a comparatively small loss to the Association, if any.

Acknowledgment should be made of the generosity of Parker, Stone & Baird Company, who, as a manifestation of their good will towards the Bar Association, have published the BULLETIN at a substantial financial loss (approximately \$60.00 per month), to themselves.

As to the merit of the material in the BULLETIN, of course its readers are the best judges. However, the Committee wishes to take this opportunity of thanking President Hubert T. Morrow for the interesting and pertinent messages which have appeared monthly on "The President's Page." Also, special recognition should be accorded such articles which have appeared during the year as the following: "Amendments to the Corporation Laws by the Legislature of 1927," by James S. Bennett; "The Trial Lawyer and His Art," by Norbert Savay; "California's New Arbitration Law," by William T. Craig; "The State Bar of California," by Chief Justice William H. Waste; "Recent Legislation Relating to Labor Laws," by Charles F. Lowy; "Insanity as a Defense in Criminal Cases," and "The Impeachment of Witnesses," by Judge Charles W. Fricke; "Plagiarism," by Maurice Salzmann; "Law and Motion Observations," by Judge B. Rey Schauer; "Legal and Pre-Legal Education," by John E. Biby; "The Newspaper, the Courts, and Crime News," and "Judicial Power and Declaratory Relief," by Judge Leon R. Yankwich; "Re-

forms in the Law of Evidence," by Earle K. Stanton; "Contempt of Court," by Judge Fletcher Bowron; "Equitable Conversion in California," by Orville P. Cockerill; "Man, Know Thy Heirs," by May D. Lahey; "Legal Problems in Colorado River Development," by Reuel L. Olson; "Comments on the Revenue Act of 1928," by Dana Latham; "What are We Here For?" by Silas H. Strawn; "On the Art of Legal Draftsmanship," by Joseph P. Loeb; "Changes in Procedural Methods in Use of Medical and Other Professional Expert Testimony," by Doctor A. F. Wagner; and "Courts of Inferior Jurisdiction," by Judge Thomas B. Reed.

The valuable reports of Los Angeles Bar Association's active committees have been made available to the Bar Association as a whole through their publication in the BULLETIN. Likewise, very worthy of mention are the helpful treatments which have appeared regularly in the Book Review department, conducted by Harry Graham Balter.

The committee has adopted as a suggested policy for the publication of the BULLETIN, the following points:

1. The BULLETIN should be more than a mere "house organ." It should seek out, encourage and develop legal writers.

2. It should aim not to encroach upon the field of law journals, but should aspire to occupy a field in the legal world such as is occupied by a weekly, such as *Time* and *Collier's*. The slogan of the BULLETIN should be, "Time is of the essence." We want the BULLETIN to be used frequently by the busy practitioner, and in order to interest him and hold his attention, the articles should be brief, practical and authoritative, and the articles themselves might be along the following lines:

- (a) Practice in the lower courts;
- (b) Information concerning Bar Association activities;

- (c) Legal lore and curiosities;
- (d) Comment on changes in the Code by legislative amendment;
- (e) Brief review of important decisions.

3. By all means, we should seek to create the impression that the BAR BULLETIN is not ephemeral, but permanent, and any plan that can be devised to create and foster that impression should be adopted.

The following suggestions are practical:

1. To bind volumes at a low cost;
2. Sell complete files at cost price;
3. Complete files in the hands of the secretary of the Association by advertising for missing numbers.

CONCLUSION

In conclusion, your Committee is of the opinion that the BULLETIN is very ably edited, and that the publication is worthy of the interest, approbation and active support of every member. Our experience has taught us that the financial problem of the BULLETIN is very largely solved by converting the publication from one issued twice a month to one issued once a month. We are strongly of the opinion that the needs of the Association are entirely met by a monthly publication. In fact, since the change was made six or seven months ago the BULLETIN has been published and distributed more economically than ever before in its history.

Your chairman takes this occasion to express his appreciation for the valuable assistance which has been rendered by all of the other members of the Committee and the co-operation which has been received from the secretary, Mr. R. H. F. Variel, Jr., and the officers and trustees of the Association.

Respectfully submitted,
Andrew J. Copp, Jr., *Chairman*.

STATEMENT OF OWNERSHIP, ETC.

(Continued from Page 236)

ditions under which stockholders and security holders who do not appear upon the books of the company as trustees, hold stock and securities in a capacity other than that of a bona fide owner; and this affiant has no reason to believe that any other person, association, or corporation has any interest direct or indirect in the said stock, bonds, or other securities than as so stated by him.

6. That the average number of copies of each issue of this publication sold or distributed, through the mails or otherwise, to paid subscribers during the six months pre-

ceding the date shown above is ———. (This information is required from daily publications only.)

(Signed) HOWELL PURDUE.

(Signature of editor, publisher, business manager, or owner.)
Sworn to and subscribed before me this 9th day of April, 1929.

(Signed) NAN B. SMITH,

Notary Public in and for the County of Los Angeles, State of California.

(Notary Seal)
1933)

(My commission expires February 15, 1934)
Form 3526.—Ed. 1924

PLEBISCITE APPROVED

After the results of the recent plebiscite conducted by the Los Angeles Bar Association were made known, Mr. Warren Lee Pierson withdrew from the race for judge of the Municipal Court. The letter written to his opponent and printed below shows a most commendable spirit.

WARREN LEE PIERSON
ATTORNEY AT LAW
510 WEST SIXTH STREET
LOS ANGELES

April 3, 1929

Hon. Dudley S. Valentine,
Judge of the Municipal Court,
Los Angeles, California.

Dear Judge Valentine:

I have given careful consideration to the results of the recent vote of the Los Angeles Bar Association so far as it affects the particular office for which we are candidates. I wish to congratulate you upon the splendid support received from the members of our profession. It indicates to me, as it must to every one, that you are conducting your office very satisfactorily.

I have always approved of the plebiscites conducted by the Bar Association, because I have felt that it was one of the important means by which the standard of our judiciary could be maintained and the general public assisted in voting for the most worthy judicial candidates. The consistent support by the bar of endorsements made from time to time by the Association should eventually spare qualified incumbents from the expense and annoyance of political campaigns. This will result in conserving energy which can be more properly devoted to the duties of their offices.

Best wishes for your continued success.

Sincerely yours,

WLP:EL

(Signed) WARREN LEE PIERSON.

ATTORNEYS HAVING CORRESPONDENTS ABROAD

With the view of calling to the attention of members of the Bar Association having correspondents in foreign countries the work being done and information being sought by the United States Department of Commerce, the following letter is published:

UNITED STATES
DEPARTMENT OF COMMERCE
BUREAU OF FOREIGN AND DOMESTIC COMMERCE

LOS ANGELES OFFICE
CHAMBER OF COMMERCE BUILDING

The Secretary,
Los Angeles Bar Association,
I. W. Hellman Bldg.,
Los Angeles, Calif.

Los Angeles, February 27, 1929.

Dear Sir:

For sometime past this Department has furnished lists of foreign attorneys considered best qualified by the reporting officers to represent American firms. In furnishing these lists, it is our usual suggestion that instead of referring legal matters to a

(Continued on Page 253)

Book Reviews

HARRY GRAHAM BALTER of the Los Angeles Bar
Assistant United States Attorney

LIFE AND DEATH IN SING SING, by Lewis E. Lawes, Warden of Sing Sing Prison; 267 pages; Doubleday, Doran & Co., Garden City, New York; Price, \$3.50.

Henry Menken, of *The American Mercury* fame, once blurted forth editorially that it would be a good idea to study the question of crime and its treatment from within.

An investigation and study of that nature has been made by Lewis E. Lawes, warden of Sing Sing Prison and reported in his book recently published by Doubleday Doran and Co., Inc., entitled *Life and Death in Sing Sing*.

This book truly reflects a most intimate knowledge of the criminal from the time he "dresses in" to serve his term until his death. Lawes presents his study as stated in his introduction:

"There have been some excellent books on crime and the criminal written from the 'front' of the problem by sociologists; some from the 'rear' by jurists; some from the 'cellar' by former prisoners. In this book, I am trying to tell just what I have seen from the inside. The sociologist sees the criminal as the product of our social organization; the jurist sees him as a man who is wilfully perverse; the ex-prisoner sees him as the under dog; I see him as a MAN in prison. I live with this man."

Crime is the greatest problem confronting the American people today, yet comparatively little real effort has been made to determine the true cause of crime and to apply preventive measures so as to minimize this social evil. Volumes have been written and more said on the subject from various view points, but nothing has been presented from an intimate knowledge of the prisoner with the accuracy of a scientist and in an unbiased manner, until the publication of *Life and Death in Sing Sing*.

A former soldier in the Regular Army of the United States was appointed a guard at Clinton Prison on March 1, 1904, and since this date he held positions in various prisons when on January 1, 1920, he was appointed warden of the world's best

known prison, Sing Sing. From this position Lawes was elevated in 1922 to the death penalty does not deter, that one man who helped build the old death house was later executed in it, and that a man presidency of the National Warden's Association, in 1923 to the presidency of the American Prison Association, and in 1925, United States Delegate to the International Prison Congress.

This ex-soldier and former prison guard has written a book which is epoch-making. In no uncertain terms he has revealed the truth about crime, criminals and its treatment. With the courage and daring of a soldier he shows that "the subject of crime and criminals must be stripped completely of superstition and tradition and re-stated, studied and evaluated along scientific lines, just as has been done in recent years with disease."

The question of education, religion, environment and severity of punishment as applied to the treatment of crime is presented in a courageous manner. The points are proven in a firm, unbiased and unprejudiced manner by a tremendous amount of statistics and facts and he completely crushes every old idea that the average person has on crime, criminals and treatment in the most interesting and amazing manner conceivable.

The "sob sister" and the "hard brother" have had their inning to satisfy their emotions, and it is a matter of conjecture which of the two have caused the greater harm to society. Also, the reactionary mind looks too far back for his manner of handling the problem and thereby retards any progress on the subject; while the radical looks too far ahead and is therefore out of step in proposing a proper method of handling a most serious problem as of this present order.

The paragraphs "Crime—What Is It?" and "The Criminal, Who and Why?" should be studied by every person who earnestly desires to understand the problem intelligently. The paragraph against the death penalty, entitled, "Why I Changed my Mind," presents a convincing argument

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against capital punishment. It is interesting to note among his statements to prove that who built the electric chair of a near-by State subsequently committed a murder and paid the penalty in the identical chair.

Chief Justice Taft of the United States Supreme Court stated that our criminal procedure was a disgrace. Warden Lawes book is a written indictment against our entire system of criminal law and procedure and against the self-righteous who believe in giving a severe punishment as the only proper cure for crime. They have not

learned that they are actually encouraging brutality and creating the very thing they desire to discourage. Their method is merely the easiest way possible of handling a serious problem. This indictment correctly charges our present society with ignorance and brutality in the most flagrant manner and a study of the book will cause you to plead guilty to the charge if you have no selfish purpose to promote.

SAUL S. KLEIN, *Member of Committee on Criminal Law and Procedure, Los Angeles Bar Association.*

FOREIGN CORRESPONDENTS

(Continued from Page 251)

foreign attorney, the American firm should refer the case through an international law firm having an established correspondent in the foreign territory, or through its own counsel to one of those named. The American attorney, having immediate knowledge of the firm's case, will prepare and cause all documentary evidence to be properly certified, thus assuring proper preparation and presentation of the claim.

At the present time, our Division of Commercial Laws is engaged in listing American firms having correspondents abroad so that we can even more definitely assist American firms along the suggested lines, by being able to specifically name American attorneys having correspondents in each district.

In this connection, we are anxious to secure the names of those Los Angeles attorneys who have foreign correspondents, together, if possible, with the number of foreign correspondents which they have.

Any suggestions or assistance which you could give us in this matter will, I assure you, be greatly appreciated.

Cordially yours,

MTH:mss

(Signed) JAMES H. SMILEY, District Manager.

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Security-First National Bank of Los Angeles

Taking rank as one of the ten largest banks in America, a \$600,000,000 institution came into existence at the close of business March 30 under the name, Security-First National Bank of Los Angeles. It represents a consolidation of the Los Angeles-First National Trust & Savings Bank and the Security Trust & Savings Bank, two of the oldest and foremost banks in California. It has a capital account of \$50,000,000.

With the oldest of the component banks founded in 1875, the Security-First National traces its history back to the days when Los Angeles was still much of a frontier town struggling with its law and order problems.

J. F. Sartori, formerly president of the Security, is president of the bank and chairman of its executive committee. Henry M. Robinson, formerly president of the First National, is chairman of the board. Both men enjoy a national reputation as bankers. Mr. Sartori, who organized the Security Bank in 1889, has been a bank

executive in Southern California for more than 40 years; is a former president of the savings bank division of the American Bankers Association and has served for five terms as president of the Los Angeles Clearing House Association.

Mr. Robinson has been a banker in Los Angeles since 1920, when he became president of the Los Angeles-First National after an eventful career in the East and Middle-West as a lawyer, newspaper publisher, banker, and director of large corporations. He was one of the three members of the Dawes Commission.

Formation of the Security-First National Company as the investment arm of the new institution has been effected. It has a capital account of \$6,000,000 and is owned beneficially by the shareholders of the new bank.

In addition to numerous branches in the metropolitan area of Los Angeles the Security-First National Bank operates in communities from Fresno to Imperial Valley.

SECURITY-FIRST NATIONAL BANK OF LOS ANGELES

THIS Bank was created, effective April 1, 1929, through consolidation of the Los Angeles-First National Trust & Savings Bank and the Security Trust & Savings Bank of Los Angeles.

The SECURITY-FIRST NATIONAL BANK operates Commercial, Trust and Savings Departments, under National charter, with

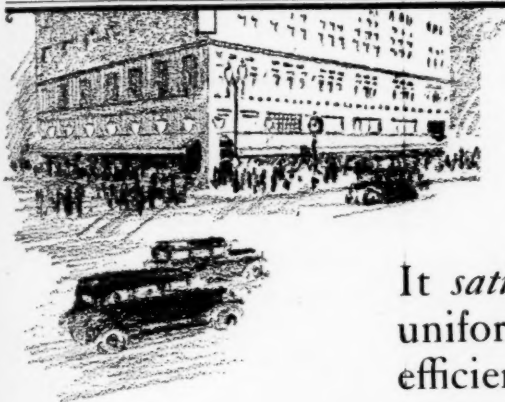
Resources . . .	\$600,000,000
Capital . . .	30,000,000
Surplus . . .	15,000,000
Undivided profits	5,000,000

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CHAIRMAN OF
THE BOARD

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PRESIDENT AND CHAIRMAN
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